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In the Supreme Court of the United States

OCTOBER TERM, 1956.

No. [redacted] 17

UNITED STATES OF AMERICA,

Petitioner,

vs.

RAY F. SPEERS,
Trustee in Bankruptcy of the Kurtz Roofing Company, etc.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RAY F. SPEERS, TRUSTEE IN BANKRUPTCY.

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In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 646.

UNITED STATES OF AMERICA,

Petitioner,

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RAY F. SPEERS,
Trustee in Bankruptcy of the Kurtz Roofing Company, etc.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RAY F. SPEERS, TRUSTEE IN BANKRUPTCY.

OPINION ON THE COURT OF APPEALS.

The complete legal foundation for the judgment appealed from (R. 50) is found in the opinion (R. 44) of the Court of Appeals in this case, 335 F. 2d 311 (August 4, 1964), written by Judge O'Sullivan. There, all pertinent legal issues are considered in progression and found to require the conclusion that Congress has conferred upon trustees in bankruptcy the rights of a judgment creditor under 26 U. S. C. Section 6323(a).

After a short statement of the controlling facts and quotation from the statutes under consideration (Sec. 70c of the Bankruptcy Act, 11 U. S. C. Sec. 110(c) and Sec. 6321, Sec. 6323(a) of the Internal Revenue Code of 1954, 26 U. S. C. Sec. 6321, Sec. 6323(a)) the opinion stated this issue:

> "The question before us, then, is whether the words 'a creditor then holding a lien' upon the bankrupt's assets 'by legal * * * proceedings' describe among other things, a judgment creditor. If so, the bankruptcy trustee, under § 70, sub c, has all the rights of such judgment creditor * * *." (p. 312.)

In response, the court concluded (1) that by the 1950 and 1952 amendments, "Congress intended to strengthen, not weaken, the trustee's rights against all forms of secret liens"; (pp. 312-313, R. 46), (2) that Section 70(c) confers on the trustee not *some*, but *all* of the rights of a creditor holding a lien arising from judicial proceedings (p. 313, R. 47); (3) that this Court's decision in *United States v. Gilbert Associates, Inc.*, 345 U. S. 361, 364 (1953) was not contrary to this conclusion (p. 314, R. 48) inasmuch as it involved a conflict between federal statute and state decisional law rather than resolution of the relationship between carefully drawn federal statutes.

The court's ultimate conclusion was stated by quoting from the concurring opinion in the Ninth Circuit case[1] that "In my view this statute, (Section 70(c)) states as clearly as words can speak that a trustee is to be treated *as if* he were a judgment creditor, although obviously he is not one."

This opinion is reprinted on pages 44-49 of the transcript of record. It contains complete answers to petitioner's contentions.

QUESTION PRESENTED.

Does the grant, by federal statute, to a trustee in bankruptcy of "all the rights * * * of a creditor * * * holding a lien" "by legal * * * proceedings" include the rights extended by federal law to a "judgment creditor"?

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[1] Judge Hamley's statement in the case of *Simonson v. Granquist*, 287 F. 2d 489, 491 (9 Cir. 1961), reversed on other grounds, 369 U. S. 38 (1962).

STATUTES AND REGULATIONS INVOLVED.

Only three statutes are involved in this case. The first is Section 70c of the Bankruptcy Act[2] (App. p. 15), which confers upon trustees in bankruptcy the rights of a judgment lien creditor.

The others are Sections 6321 and 6323 of the Internal Revenue Code of 1954[3] (App. pp. 15, 16). The first creates a lien for taxes on neglect or refusal to pay after demand, and the next provides that such lien shall be invalid against a "judgment creditor until notice thereof has been filed * * *."

These statutes are printed in the appendix to petitioner's brief and for convenience are also printed at pages 15 to 17 in the appendix to this brief.

STATEMENT OF THE CASE.

The controlling facts are uncomplicated and uncontradicted. On June 3, 1960, federal taxes were assessed against The Kurtz Roofing Company but were not paid. (R. 12, 30, 32.) No notice of this tax assessment was filed as required by Section 6323 of the Internal Revenue Code of 1954. (R. 12, 30, 32.)

On June 20, 1960, the company filed a voluntary petition in bankruptcy and adjudication was entered as a matter of course. (R. 2, 31.)

All of the property with respect to which the United States claims a lien was personal property located in Erie County, Ohio in the possession of the bankrupt prior to bankruptcy and of the bankruptcy court and its trustee thereafter. (R. 31.)

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[2] 11 U. S. C. Sec. 110(c).

[3] 26 U. S. C. Sec. 6321 and Sec. 6323.

Subsequently, administration of the bankrupt estate was completed and notice of final meeting with proposed distribution was given to creditors. (R. 8.) The dividend for tax claims was 53.48%. This amounted to $9,202.35 for the District Director of Internal Revenue and $1,925.26 for state and local taxing authorities. (R. 10.) The government objected and filed an answer asserting statutory tax liens. (R. 10.) After notice, hearing was held on this answer (R. 13-26), and on June 12, 1962, the referee entered an order denying the government's claim of lien priority. (R. 11.)

This order was reviewed by the District Court and, on March 20, 1963, it was confirmed. (R. 42.)

The Sixth Circuit Court of Appeals affirmed, 335 F. 2d 311 (R. 44), and its order (R. 50) is now before this Court on certiorari.

The failure, *prior to bankruptcy*, to file notice as called for by Section 6323(a) of the Internal Revenue Code of 1954 creates the issue and question on this appeal. The trustee claims the rights of a "judgment creditor," and contends that without the timely filing of notice the government tax lien is subordinate to the trustee's rights as a judgment lien creditor granted by Section 70c of the Bankruptcy Act. The referee, the District Court and the Sixth Circuit Court of Appeals have all agreed with this contention. (R. 11, 28, 50.)

The government contends that despite the secret nature of the tax lien before notice is filed, a bankruptcy trustee does not have *all* the rights of a "judgment creditor" and that this secret lien is not invalid as to him. It admits that a trustee has been granted *some* of the rights of a

judgment creditor but rejects the statutory recitation that he is vested with "all" such rights.[4]

It admits that the "verbal logic of the Court of Appeals' decision is unassailable," [5] but refuses to accept it.

SUMMARY OF ARGUMENT.

The grant by federal statute to a trustee in bankruptcy of "all the rights * * * of a creditor * * * holding a lien" "by legal * * * proceedings" includes the rights extended by federal law to a "judgment creditor."

A. The case of *United States v. Gilbert Associates, Inc.*, 345 U. S. 361, 364 (1953) is not relevant nor controlling in this case.

B. The history and purpose of Section 70c of the Bankruptcy Act evidence clear legislative intent that bankruptcy trustees have all the rights of a judgment creditor.

C. Section 70c is unambiguous and its terms include grant of rights of judgment creditor.

D. Section 67b of the Bankruptcy Act, 11 U. S. C. Section 107(b), does not detract from trustee's status as judgment creditor "at the date of bankruptcy."

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[4] Court of Appeals opinion 335 F. 2d 311, 313, R. 47.

[5] Petitioner's brief, p. 14.

ARGUMENT.

A. The case of *United States v. Gilbert Associates, Inc.*, 345 U. S. 361, 364 (1953) is Not Relevant Nor Controlling in This Case.

Keystone of the government's argument and of the decisions of the Second, Third and Ninth Circuits[6] which accepted the government's line of reasoning is the following sentence taken from *United States v. Gilbert Associates, Inc., supra*: "In this instance, we think Congress used the words 'judgment creditor' in § 3672 (now § 6323) in the usual, conventional sense of a judgment of a court of record, since all states have such courts."

As stated by the Court of Appeals,[7] this holding does not require acceptance of the government's contention. First, the construction of Section 70c was not in issue, and, second, the factual basis for decision was much different.

The enactment of the Bankruptcy Act is based on broad and very general grant of constitutional authority.[8] Under this, bankruptcy trustees have been granted the status and authority necessary for equitable distribution of assets among creditors. Section 70 of the Bankruptcy Act states three such grants: (a) title to all of the bankrupt's property; (b) the right to reject burdensome property and contracts; and (c) the status of a judgment lien creditor. The propriety of each of these grants has been acknowledged (4 *Collier on Bankruptcy*, 948, 1347, 1413, Secs.

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[6] *Brust v. Sturr*, 237 F. 2d 135 (2 Cir. 1956); *In re Fidelity Tube Corp.*, 278 F. 2d 776 (3 Cir. 1960); cert. denied 364 U. S. 828 (1960); *United States v. England*, 226 F. 2d 205 (9 Cir. 1955); *Simonson v. Granquist*, 287 F. 2d 489 (9 Cir. 1961); reversed on other grounds, 369 U. S. 38 (1962).

[7] 335 F. 2d 311, 314, R. 48.

[8] Article I, Section 8, Clause 4, United States Constitution grants legislative power "to establish * * * uniform laws on the subject of bankruptcies throughout the United States."

70.04, 70.43, 70.49); and there is nothing in the *Gilbert Associates, Inc., supra,* opinion or judgment which considers or limits the effect of Section 70.

Gilbert Associates, Inc., supra, is subject to factual distinction also. There, the claim of "judgment creditor" was based on state court decisions that the assessment of a tax is "*in the nature* of a judgment * * *."[9] In the present case, the trustee's claim of "judgment creditor" arises from federal statutory pronouncement that he "shall be deemed vested * * * with all the rights * * * of a creditor * * * holding a lien" "by legal or equitable proceedings * * *."

The Court of Appeals concluded that the *Gilbert Associates, Inc.* case, *supra,* was "inapposite to the question" in this case.[10] We believe this was a correct conclusion.

B. The History and Purpose of Section 70c of the Bankruptcy Act Evidence Clear Legislative Intent that Bankruptcy Trustees have All the Rights of a Judgment Creditor.

Under court decisions prior to 1910, unrecorded and secret liens prevented equitable administration of bankrupt estates. In that year, by amendment of Section 47 of the Bankruptcy Act,[11] Congress granted to trustees in bankruptcy, "all the rights, remedies and powers of a judgment creditor then holding an execution duly returned unsatisfied." The acknowledged purpose of this amendment was to correct the evil of secret liens. *Sampsel v. Straub,*

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[9] *United States v. Gilbert Associates, Inc., supra,* 363.

[10] 335 F. 2d 311, 314, R. 48.

[11] 11 U. S. C. Sec. 75.

et al., 194 F. 2d 228, 231 (9 Cir. 1951); cert. denied 343 U. S. 927 (1952).

Three years later, in 1913, and with the same purpose, Congress adopted the express prohibition of Section 6323. "Congress enacted Section 3672 (now Section 6323) to meet the harsh condition created by the holding in *United States v. Snyder*, 149 U. S. 210, * * * that a secret federal tax lien was good against a purchaser for value without notice." *United States v. Gilbert Associates, Inc., supra*, 363-364.

In 1952, Section 70c was amended to direct that "the trustee * * * at the date of bankruptcy, shall be deemed vested * * * with all the rights, remedies and powers of a creditor then holding a lien" "by legal or equitable proceedings." [12]

Congressional statements both before and after this amendment indicate the intention that a bankruptcy trustee should have the rights of a judgment creditor. Senate Report No. 72, House Report No. 1293 (S. 88), U. S. Code Cong. Serv., 81st Cong., 2nd Sess. (1950) 1985, 1986; 96 *Cong. Record* 1529, 1532 (1950);[13] *Hearing Before Sub-*

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[12] 66 Stat. 430 (1952).

[13] Senate Report No. 72 (House Report No. 1293), *supra*, makes the judgment lien creditor status of the trustee in bankruptcy clear with these words at pages 1985-1986:

> "(b) Section 2 of the bill amends section 70c of the Bankruptcy Act, dealing with the general rights of a trustee in bankruptcy, and is essentially correlative to the amendment to section 60a, effected by section 1 of the bill. Under existing law, a trustee as to all property in the possession or under the control of the bankrupt, at the date of bankruptcy, is deemed vested, as of the date of bankruptcy, with all of the rights of a creditor then holding a lien by legal or equitable proceedings, and, as to all other property, with the rights of a *judgment creditor* then holding an unsatisfied execution.

(Continued on following page)

committee No. 2 of the Committee on the Judiciary, House of Representatives, 81st Cong., 1st Sess. on H. R. 272 and H. R. 2691, March 14, 16 and 18, 1949, Serial No. 7, pp. 8, 11-12, 49, 61, 138; *Hearings Before Subcommittee on Bankruptcy and Reorganization of the Committee on the Judiciary, House of Representatives,* 80th Cong., 2nd Sess., H. R. 2412 and H. R. 5834, May 7, 1948, Serial No. 19, pp. 9, 10, 14, 17, 47, 49, 63, 65, 148.

The first cited of these reports, which is quoted at length in the footnote, contained the statement that "A trustee in bankruptcy occupies the position of a 'universal' judgment or lien creditor * * *."

Subcommittee Chairman Hobbs confirmed this on the floor of the House of Representatives stating: "The trustee in bankruptcy is removed from the position of a bona fide purchaser for value without notice and given an adjudicated lien as a judgment creditor. I think that that is a fair statement of the act." "All that a trustee needs is a judgment from a court of competent jurisdiction giving him his lien * * * and that is what this bill does." 96 *Cong. Record* 1532, *supra.*

(Continued from preceding page)

"In view of the amendment made to section 60a, as well as intrinsically, it is deemed wise to place the trustee in bankruptcy in the position of a lien creditor with respect to all of the bankrupt's property, and section 2 of the bill so amends section 70c.

* * * * *

"Traditionally, it is the primary office of the Bankruptcy Act to protect creditors, both secured and unsecured; to marshal the bankrupt's assets; and to distribute them among his creditors equitably and ratably, in accordance with their respective rights and interests.

"It follows from these broad general principles, as well as from the basic provisions of the Bankruptcy Act itself that—

"(A) A trustee in bankruptcy occupies the position of a 'universal' judgment or lien creditor, with all such a creditor's remedies (Bankruptcy Act, sec. 70); * * *"

As to statements since the 1952 amendment, we believe that the government misconstrues Congressional Committee Reports subsequent to the decision in *In re Fidelity Tube Corp., supra.* Senate Report No. 1133, 88th Congress, 2nd Sess. (p. 11) and House Report No. 454, 88th Congress, 1st Sess. (p. 10) both express the opinion that the decisions of the Courts of Appeals of the Second, Third and Ninth Circuits "appear to be contrary to the legislative purpose which gave to the trustee all the rights of an ideal judicial lien creditor." [14]

The Court of Appeals recognized this legislative intent and purpose, and we believe that this was correct.

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[14] Senate Report No. 1133, *supra*, at page 11, said:

"The effect of these decisions is that the Federal Government's unrecorded tax lien prevails over the rights of the trustee under section 70c. *This would appear to be contrary to the legislative purpose which gave the trustee all the rights of an ideal judicial lien creditor.* Prior to 1950, the trustee was given the status of a judicial lien creditor as to all property coming into the possession of the bankruptcy court. As to all other property, he was given the rights of a judgment creditor holding an execution returned unsatisfied. In 1950, the distinction which turned on possession was eliminated and the trustee was simply given the rights of a judicial lien creditor. The House report which accompanied the bill indicates that the purpose of Congress was not to contract but rather to expand the rights of the trustee under section 70c. The report states that the amendment to section 70c—'has been placed in the bill for the protection of trustees in bankruptcy as correlative to the amendment to section 60, and also to simplify, and to some extent *expand, the general expression of the rights of trustees in bankruptcy* (H. Rept. 1293, 81st Cong., 2d sess., p. 7 (1949)).'

"As a matter of general law, the holder of a lien by legal proceedings has greater rights than a judgment creditor who usually has no rights in the personal property of the debtor by virtue of his judgment. Even as to real property it is frequently necessary for the judgment creditor to take further action after judgment to create a lien. It would seem anomalous to allow judgment creditors to prevail over secret tax liens and to deny that right to a judicial lien holder. As against liens and transfers other than Federal tax liens, it has generally been held that a trustee in bankruptcy does

(Continued on following page)

C. Section 70c is Unambiguous and Its Terms Include Grant of Rights of Judgment Creditor.

Considering its terms objectively, the construction of Section 70c presents neither ambiguity nor difficulty. Its language is the "dependable guide" to its meaning. *Simonson, Trustee v. Granquist, District Director,* 369 U. S. 38, 40 (1962). "First reference is * * * to the literal meaning of the word employed" [*Flora v. United States,* 357 U. S. 63, 65 (1958)], and statutes are to be applied "on the basis of what Congress has written, not what Congress might have written." *United States v. Great Northern Ry. Co.,* 343 U. S. 562, 575 (1952). Plain words even obviate the need for reference to legislative history. *Ex parte Collett,* 337 U. S. 55, 61 (1949).

Section 70c says that these rights "*shall be deemed vested*" in a bankruptcy trustee. This terminology is mandatory [*Escoe v. Zerbst, Warden,* 295 U. S. 490, 494

(Continued from preceding page)

have the rights of a judgment creditor. See, e.g., *McKay v. Trusco Finance Co.* (198 F. 2d 431 (5th Cir. 1952)); *Sampsell v. Straub* (194 F. 2d 228 (9th Cir. 1951)); cert. denied, 343 U. S. 927 (1952).

"The need for forthright congressional action in this matter was underscored by the decision in *Fidelity Tube,* supra. There the court pointed to the fact that legislation clarifying the status of the judgment creditor was pending before Congress and further declared that it considered the enactment of such legislation necessary if the trustee was to have the status of a judgment creditor vis-a-vis the Federal tax lien.

"In order to assure the trustee of this status, section 6 of H. R. 394, as reported, specifically provides that a trustee shall have the rights and powers of 'a creditor who obtained a judgment against the bankrupt upon the date of bankruptcy, whether or not such a creditor exists.' " (Emphasis added.)

House Report No. 454, *supra,* at page 10 also said:

"that the effect of *In re Fidelity Tube Corp., supra,* would appear to be contrary to the legislative purpose which gave the trustee all the rights of an ideal judicial lien creditor."

(1935)] and creates "a conclusive presumption." *Kohn v. Myers,* 266 F. 2d 353, 357 (2 Cir. 1950). "Vested," of course, is defined as being "so fixed as to be no longer subject to determination or forfeit."

That the contested clause includes the status of judgment creditor appears from related Sections 60a(1) and 67a(1) of the Bankruptcy Act.[15] The first of these sections recites this definition: "A lien obtainable by legal or equitable proceedings upon a simple contract within the meaning of paragraph (2) is a lien arising in ordinary course of such proceedings upon the entry or docketing of a judgment or decree, * * *."

The second equates judgments with "legal or equitable * * * proceedings" in these words: "Every lien against the property of a person obtained by attachment, judgment, levy, or *other* legal or equitable process or proceedings * * *" (Emphasis added.)

And, in the case of *Myers, Trustee v. Matley,* 318 U. S. 622, 627 (1943), this Court looked upon a bankruptcy trustee as an "execution creditor." At page 627, it said:

> "Historically, and under the theory of the present Act, bankruptcy has the force and effect of the levy of an execution for the benefit of creditors to insure an equitable distribution amongst them of the bankrupt's assets. The trustee is vested not only with the title of the bankrupt but clothed with the right of an execution creditor with a levy on the property which passes into the trustee's custody."

We believe that Judge O'Sullivan of the Sixth Circuit and Judge Hamley of the Ninth Circuit have stated the proper conclusion, "as clearly as words can speak * * * a trustee is to be treated *as if* he were a judgment creditor * * *."[16]

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[15] 11 U. S. C. Secs. 96(a)(4), 107(a)(1).

[16] 335 F. 2d 311, 314, R. 49; *Simonson v. Granquist, supra.*

D. Section 67b of the Bankruptcy Act, 11 U. S. C. Section 107(b), Does Not Detract from Trustee's Status as Judgment Creditor "at the date of bankruptcy."

Departing completely from the record and disregarding the findings of fact on which this appeal is based (R. 49, 32), the government contends that the filing (7½ months after bankruptcy) of notice of its tax lien in Erie County, Ohio where bankrupt had been in business defeated trustee's position as a judgment creditor at the date of bankruptcy. Two facts are determinative. First, all property with respect to which the government claims a tax lien was personal property in possession of the bankrupt and later the trustee but never in possession of the government. (R. 31.) Consequently, under Section 67c of the Bankruptcy Act,[17] the lien for taxes must be subordinated to bankruptcy claims.

In addition, the trustee's position as a creditor under Section 70c of the Bankruptcy Act[18] is operative as of the date of bankruptcy. *Lewis, Trustee v. Manufacturers National Bank of Detroit*, 364 U. S. 603, 607 (1961). In this case, after reviewing the history of Section 70c, this Court said:

> "We think that one consistent theory underlies the several versions of § 70c which we have set forth, *viz.*, that the rights of creditors—whether they are existing or hypothetical—to which the trustee succeeds are to be ascertained as of 'the date of bank-

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[17] 11 U. S. C. Section 107(c) which provides: "c. Where not enforced by sale before the filing of a petition initiating a proceeding under this Act, and except where the estate of the bankrupt is solvent: (1) though valid against the trustee under subdivision b of this section, statutory liens, including liens for taxes or debts owing to the United States * * *, on personal property not accompanied by possession of such property, * * * shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision a of section 64 of this Act * * *."

[18] 11 U. S. C. Section 110(c).

> ruptcy,' not at an anterior point of time. That is to say, the trustee acquires the status of a creditor as of the time when the petition in bankruptcy is filed. We read the statutory words 'the rights * * * of a creditor [existing or hypothetical] then holding a lien' to refer to that date."

Under either of these authorities, the priority of the government's late-filed lien is subordinated to the interest of the trustee. (R. 8-10.)

CONCLUSION.

All legislative and statutory signposts point to the conclusion that bankruptcy trustees are to be accorded all of the rights of a judgment creditor or lien holder as of the date of bankruptcy.

Since the 1952 amendment of Section 70c which used the words "of a creditor holding a lien" "by legal * * * proceedings at the date of bankruptcy * * *," three Courts of Appeals have denied that "judgment creditor" is included within the expansive terms used. Finally, in this case, the Court of Appeals for the Sixth Circuit acknowledged and stated this obvious conclusion. The government acknowledges that the "logic of the court of appeals' decision is unassailable." We agree and urge that the decision and judgment of that court be affirmed.

Respectfully submitted,

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APPENDIX.

Bankruptcy Act.

Sec. 70

c. The trustee may have the benefit of all defenses available to the bankrupt as against third persons, including statutes of limitation, statutes of frauds, usury, and other personal defenses; and a waiver of any such defense by the bankrupt after bankruptcy shall not bind the trustee. The trustee, as to all property, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt could have obtained a lien by legal or equitable proceedings at the date of bankruptcy, shall be deemed vested as of such date with all the rights, remedies, and powers of a creditor then holding a lien thereon by such proceedings, whether or not such a creditor actually exists.

(11 U. S. C. 110(c))

Internal Revenue Code of 1954.

§ 6321. *Lien for taxes*

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights of property, whether real or personal, belonging to such person. Aug. 16, 1954, 9:45 a.m., E.D.T., c. 736, 68A Stat. 779.

(26 U. S. C. 6321)

§ 6323. *Validity against mortgagees, pledgees, purchasers, and judgment creditors*

(a) Invalidity of lien without notice.—Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) Under state or territorial laws.—In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) With clerk of district court.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) With clerk of district court for District of Columbia.—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) Form of notice.—If the notice filed pursuant to subsection (a) (1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a) (2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

(c) Exception in case of securities.—

(1) Exception.—Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph

(2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) Definition of security.—As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(d) Disclosure of amount of outstanding lien.—If a notice of lien has been filed under subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed. August 16, 1954, 9:45 a.m., E. D. T., c. 736, 68A Stat. 779.

(26 U. S. C. 6323)